

A bill for an act
relating to taxation; providing an investment tax credit; requiring reports;
proposing coding for new law in Minnesota Statutes, chapters 116J; 290.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [116J.8737] SMALL BUSINESS INVESTMENT TAX CREDIT.

Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have the meanings given.

(b) "Qualified small business" means a business that satisfies all of the following conditions:

(1) the business has its headquarters in Minnesota;

(2) at least 51 percent of the business's employees are employed in Minnesota, and 51 percent of the business's total payroll is paid or incurred in the state;

(3) the business is engaged in, or is committed to engage in, innovation in Minnesota in one of the following:

(i) using proprietary technology to add value to a product, process, or service in a qualified high-technology field;

(ii) researching or developing a proprietary product, process, or service in a qualified high-technology field;

(iii) researching, developing, or producing a new proprietary technology for use in the fields of tourism, forestry, mining, or transportation; or

(iv) qualified green manufacturing;

(4) other than the activities specifically listed in clause (3), the business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, information technology consulting, wholesale or retail trade, leisure,

hospitality, transportation, construction, ethanol production from corn, or professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants;

(5) the business has fewer than 25 employees;

(6) if the business has five or more employees as measured on a full-time equivalent basis, the business must pay its employees in excess of the first five annual wages at least 175 percent of the federal poverty guideline for the year for a family of four;

(7) the business has not been in operation for more than ten consecutive years;

(8) the business has not received more than \$4,000,000 in qualifying investments that have qualified for and received tax credits under this section;

(9) the business is not a member of a unitary group that employs more than 100 employees; and

(10) the business has not previously received private equity investments of more than \$2,000,000.

(c) "Qualified high-technology field" includes, but is not limited to, aerospace, agricultural processing, alternative energy, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biotechnology, medical device products, pharmaceuticals, diagnostics, biologicals, and veterinary science.

(d) "Proprietary technology" means the technical innovations that are unique and legally owned or licensed by a business and includes, without limitation, those innovations that are patented, patent pending, a subject of trade secrets, or copyrighted.

(e) "Qualified green manufacturing" means a business whose primary business activity is production of products, processes, methods, technologies, or services, excluding consulting, intended to do one or more of the following:

(1) increase the use of energy from renewable sources, as defined in section 216B.1691;

(2) increase the energy efficiency of the electric utility-producing infrastructure system or to increase energy conservation related to electricity or other utility use, as provided in sections 216B.2401 and 216B.241;

(3) reduce greenhouse gas emissions, as defined in section 216H.01, subdivision 2, or to mitigate greenhouse gas emissions or other waste products through, but not limited to, carbon capture, storage, or sequestration;

(4) monitor, protect, restore, and preserve the quality of surface waters; and

(5) expand use of biofuels, including expanding the feasibility or reducing the cost of producing biofuels or the types of equipment, machinery, and vehicles that can use biofuels.

(f) "Qualified taxpayer" means an accredited investor, within the meaning of Regulation D of the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.501(a), who:

(1) does not own, control, or hold power to vote 20 percent or more of the outstanding securities of the qualified small business in which the eligible investment is proposed; or

(2) does not receive more than 50 percent of the taxpayer's gross annual income from the qualified small business in which the eligible investment is proposed.

A member of the family of a taxpayer disqualified by this subdivision is not eligible for a credit under this section.

(g)(1) "Qualified angel investment network fund" means a pooled investment fund that:

(i) invests in qualified small businesses;

(ii) is organized as a pass-through entity; and

(iii) has at least three separate investors, all of whom are qualified taxpayers as defined in paragraph (f), and that own no more than 50 percent of the outstanding ownership interests in the fund; and

(2) for purposes of determining the number of investors and the ownership interest of an investor under this paragraph, the ownership interests of an investor include those of the investor's family, and any corporation, limited liability company, partnership, or trust in which the investor or the investor's family has a controlling equity interest or exercises management control. Investments in the fund may consist of equity investments or notes that pay interest or other fixed amounts, or any combination of both.

(h) "Qualified investment" means either a cash investment of a minimum of:

(1) \$10,000 in a calendar year by a qualified taxpayer; or

(2) \$50,000 in a calendar year by a qualified angel investment network fund.

The qualified investment in a qualified small business must be in exchange for common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or an equivalent ownership interest as determined by the commissioner.

(i) "Family" means a family member within the meaning of the Internal Revenue Code, section 267(c)(4).

Subd. 2. **Certification of small businesses.** (a) Businesses may apply to the commissioner for certification as a qualified small business. The application must be in the

form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$150. The application for certification must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification must be made available on the department's Web site by November 1 of the preceding year. Application fees collected are appropriated to the commissioner to be used for personnel and administrative expenses related to administering the program.

(b) A business seeking certification must submit an application for each taxable year for which the business desires certification. If a qualified small business receives a qualified investment for which tax credits are allocated, the business must annually submit a certified small business report in the form required by the commissioner with the required fee no later than February 1 for the two years subsequent to the last qualified investment. Failure to file an annual report as required under this subdivision results in a fine of \$500 and revocation of certification.

(c) The commissioner must maintain a list of businesses certified under this subdivision and make the list accessible to the public on the department's Web site.

Subd. 3. **Certification of qualified taxpayers.** (a) Taxpayers may apply to the commissioner for certification as a qualified taxpayer. The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$350. The application for certification of qualified taxpayers must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification must be made available on the department's Web site by November 1 of the preceding year. Application fees are appropriated to the commissioner for personnel and administrative expenses related to administering the program.

(b) A qualified taxpayer seeking certification must submit an application for each taxable year in which the qualified taxpayer seeks certification. If a qualified taxpayer receives tax credits under this section, a qualified taxpayer must submit an angel investor annual report in the form required by the commissioner with the required fee no later than February 1 of each year for two years subsequent to the last allocation of tax credits. Failure to file an angel investor annual report as required under this subdivision results in the revocation of tax credits. Once a qualified taxpayer has filed the required annual reports and accompanying fees for two subsequent years following allocation of tax credits and complied with all other requirements for that allocation, the tax credits are no longer subject to revocation.

Subd. 4. **Certification of qualified angel investment network funds.** (a) Angel investment network funds may apply to the commissioner of employment and economic development for certification as a qualified angel investment network fund.

The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$1,000. The application for certification of qualified angel investor network funds must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification must be made available by November 1 of the preceding year. Application fees collected are appropriated to the commissioner to be used for personnel and administrative expenses related to administering the program.

(b) A qualified angel investment network fund seeking certification must submit an application for each taxable year for which the angel investment network fund seeks certification. If any member of a qualified angel investment network fund receives tax credits under this section for qualified investments made by the fund, the qualified angel investment network fund must annually submit an angel investor annual report in the form required by the commissioner with the required fee no later than February 1 of each year for two years subsequent to the last allocation of credits. Failure to file an angel investor annual report as required under this subdivision results in revocation of tax credits. Once a qualified angel investment network fund has filed the required annual reports and accompanying fees for two subsequent years following allocation of tax credits and complied with all other requirements for that allocation, the tax credits are no longer subject to revocation.

Subd. 5. **Credit allowed.** (a) A qualified taxpayer or angel investor network fund is allowed a credit for investment in a qualified small business in the amount determined by the certification allocated by the commissioner against the tax imposed by chapter 290. The commissioner must not allocate more than \$10,000,000 in credits to qualified taxpayers or angel investment network funds per taxable year for taxable years beginning after December 31, 2009, and before January 1, 2012, and must not allocate more than \$12,000,000 in credits per taxable year for taxable years beginning after December 31, 2011. Any portion of a taxable year's credits that is not allocated by the commissioner does not cancel and may be carried forward to the subsequent taxable year until all credits have been allocated. Applications for tax investment credits must be made available on the department's Web site by September 1, 2010, and the department must begin accepting applications by September 1, 2010. Applications for subsequent years must be made available by November 1 of the preceding year.

(b) Tax investment credits must be allocated to qualified taxpayers or angel investor network funds in the order that the tax credit request applications are filed with the department. The investment specified in the application must be made within 60 days of the allocation of the credits. If the investment is not made within 60 days, the credits are

deemed revoked. A qualified taxpayer or angel investor network fund that fails to invest as specified in the application, within 60 days from allocation of the credits, must notify the department of the failure to invest within five business days of the expiration of the 60-day investment period.

(c) All tax credit request applications filed with the department on the same day must be treated as having been filed contemporaneously. In the event that two or more qualified taxpayers or angel investment network funds file tax credit request applications on the same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of credit under this section or the lesser amount of credits that remain unallocated on that day, then the credits must be allocated among the qualified taxpayers or angel investment network funds who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation for any one qualified taxpayer or angel investment network fund is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a qualified taxpayer and the denominator of which is the total of all credit allocation claims filed on behalf of all applicants on that day, by the amount of credits that remain unallocated on that day for the fiscal year.

(d) The commissioner must notify the commissioner of revenue of every credit allocated and every credit revoked under this section.

Subd. 6. **Annual reports.** (a) By February 1 of each year for two years subsequent to the last allocation of credits, qualified small businesses, qualified taxpayers, and qualified angel investment network funds must submit an annual report and a filing fee of \$100. All report fees collected are appropriated to the commissioner for personnel and administrative expense related to administering the program.

(b) Qualified small businesses must certify to the department in the form required by the commissioner that it satisfies the following requirements:

(1) the business has its headquarters in Minnesota;

(2) at least 51 percent of the business's employees are employed in Minnesota, and 51 percent of the business's total payroll is paid or incurred in the state;

(3) that the business is engaged in, or is committed to engage in, innovation in Minnesota as defined under subdivision 1; and

(4) that the business meets the payroll requirements in subdivision 1, paragraph (b), clause (6).

(c) Qualified taxpayers must certify to the department in the form required by the commissioner that the investor satisfies the following requirements:

(1) the taxpayer continues to meet the requirements of subdivision 1, paragraph (f); and

(2) that the taxpayer continues to remain invested in the qualified small business as required by section 290.0692, subdivision 3.

(d) Qualified angel investment network funds must certify to the department in the form required by the commissioner that the investor satisfies the following requirements:

(1) the taxpayer continues to meet the requirements of subdivision 1, paragraph (g); and

(2) that the angel investment network fund continues to remain invested in the qualified small business as required by section 290.0692, subdivision 3.

Subd. 7. **Rulemaking exception.** The commissioner's actions in establishing procedures and requirements and in making determinations and certifications to administer this section are not a rule for purposes of chapter 14, are not subject to the Administrative Procedure Act contained in chapter 14, and are not subject to section 14.386.

Subd. 8. **Report.** Beginning in 2011, the commissioner must annually report by March 15 to the chairs of the legislative committees and divisions having jurisdiction over taxes and economic development in the senate and the house of representatives on the tax credits issued under this section. The report must include:

(1) the number and amount of the credits issued;

(2) the recipients of the credits;

(3) the number and type of each business certified as a qualified small business;

(4) to the extent determinable, the total amount of investment generated by these credits; and

(5) any other information relevant to evaluating the effect of these credits.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **[290.0692] SMALL BUSINESS INVESTMENT CREDIT; CREDIT ALLOWED; LIMITATIONS; HOLDING PERIOD; AND CARRYOVER.**

Subdivision 1. **Credit allowed.** A qualified taxpayer is allowed a credit against the tax imposed under this chapter for investments made in the year in a qualified small business as defined under section 116J.8737. The credit equals 25 percent of the qualified taxpayer's investment in the business, but not to exceed the lesser of:

(1) the liability for tax under this chapter, including the applicable alternative minimum tax, but excluding the minimum fee under section 290.0922; and

(2) the amount of the certificate provided to the qualified taxpayer under section 116J.8737.

Subd. 2. **Limitations.** No taxpayer may receive more than \$125,000 in credits under this section in any one year.

Subd. 3. **Holding periods.** The credit is allowed only for investments for which a credit has been allocated by the commissioner of employment and economic development under section 116J.8737. Any credit taken by a taxpayer must be repaid, and any unused credits must be canceled, if the investment in the qualified small business is not held for at least three years. The three-year holding period does not apply if:

(1) the investment by the qualified taxpayer becomes worthless before the end of the three-year period;

(2) 80 percent or more of the assets of the qualified small business is sold before the end of the three-year period;

(3) the qualified small business is sold before the end of the three-year period; or

(4) the qualified small business's common stock begins trading on a public exchange before the end of the three-year period.

Subd. 4. **Proportional credits.** Each pass-through entity must provide each investor a statement indicating the investor's share of the credit amount certified to the pass-through entity based on its share of the pass-through entity's assets at the time of the qualified investment.

Subd. 5. **Carryover.** If the amount of the credit under this subdivision for any taxable year exceeds the liability for tax, the excess is a credit carryover to each of the ten succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried. The amount of the unused credit that may be added under this subdivision may not exceed the taxpayer's liability for tax less the credit for the taxable year.

Subd. 6. **Transfer of credits.** Any taxpayer who has not had liability under this chapter for the immediate past three taxable years and does not have anticipated liability for the current taxable year may transfer the entirety of the credit to any natural person of net worth, as defined in the Code of Federal Regulations, title 17, section 230.501(a). No person is entitled to a refund for the interest created under this subdivision. Only the full credit for any one taxpayer may be transferred and the interest may be transferred only one time. A credit acquired by transfer is subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer must be provided by the taxpayer in the form required by the commissioner.

Subd. 7. **Audit powers.** Notwithstanding the certification eligibility issued by the commissioner of employment and economic development under section 116J.8737, the commissioner may utilize any audit and examination powers under chapters 270C or 289A to the extent necessary to verify that the taxpayer is eligible for the credit and to assess for the amount of any improperly claimed credit.

9.1 **EFFECTIVE DATE.** This section is effective for investments made after July
9.2 1, 2010, for taxable years beginning after December 31, 2009, and only applies to
9.3 investments for which a credit has been allocated by the commissioner of employment and
9.4 economic development.